

# **THE STATE OF NEW HAMPSHIRE**



## **GOVERNOR'S COMMISSION ON DOMESTIC VIOLENCE**

### **LAW ENFORCEMENT: A MODEL FOR POLICE RESPONSE TO DOMESTIC VIOLENCE CASES**



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TO DOMESTIC VIOLENCE CASES**

**Prepared by the  
Governor's Commission on Domestic Violence**



# **GOVERNOR'S COMMISSION ON DOMESTIC VIOLENCE PROTOCOL COMMITTEE**

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## **PURPOSE OF PROTOCOL**

1. The principal purpose of this protocol is to establish guidelines and procedures to be followed by police officers and other personnel involved in the police response to domestic disturbances.
2. Other purposes and goals of this protocol are:
  - (a) To reduce the incidence and severity of domestic violence;
  - (b) To ensure the use of all means within reason to prevent further abuse (as required by RSA 173-B:9);
  - (c) To ensure that law enforcement services are no less available in cases of domestic violence than they are in other criminal cases;
  - (d) To reaffirm the police officer's authority and responsibility to make arrest decisions in accordance with established probable cause standards;
  - (e) To promote officer safety by ensuring that officers are as fully prepared as possible to respond to domestic calls;
  - (f) To apprise the victim of his or her rights and services available;
  - (g) To preserve the dignity of the parties involved;
  - (h) To increase awareness within the criminal justice system of the criminal nature of domestic violence;
  - (i) To increase the effectiveness of police responses to domestic violence incidents thereby reducing the resources consumed by the need to repeatedly respond to the same household; and
  - (j) To afford maximum protection and support to victims of domestic violence through a coordinated program of law enforcement and victim assistance.

## **POLICY**

Domestic Violence is a crime that has as a component an intimate relationship between the victim and the accused. Notwithstanding that difference, police should respond to domestic violence as they would to any crime. Police should arrest and pursue criminal remedies appropriate to the crime that the police have probable cause to believe the accused committed. In recognition of the difference between domestic violence and most other crimes, however, police also should provide victims with special assistance to help them avoid revictimization, including efforts to ensure that victims are informed of the services and support available to assist them.

## **SCOPE OF COVERAGE**

1. This protocol applies to any call to the police reporting a disturbance between "family or household members" or current or former sexual or "intimate partners".
2. "Family or household member" means:
  - (a) Spouses, ex-spouses, persons cohabiting with each other, persons who cohabited with each other but who no longer share the same residence; and

- (b) Parents and other persons related by consanguinity (blood) or affinity (marriage) other than minor children who reside with the defendant.
- 3. "Intimate partners" means persons currently or formerly involved in a romantic [dating] heterosexual or same sex relationship, whether or not such relationship was ever sexually consummated.

## **DISPATCH**

1. Dispatchers should accord domestic calls the highest priority classification. Whenever possible and consistent with department policy, the dispatcher should assign a back-up unit.
2. The dispatcher receiving a domestic call should attempt to keep the caller on the telephone to elicit as much of the following information as possible, and to relay the appropriate information to the responding officers:
  - (a) The exact nature of the incident;
  - (b) The exact location of the incident, including the apartment number, the precise location of the disputants within the building and the location of the entryways;
  - (c) A telephone number where the caller can be called back;
  - (d) Whether weapons are involved and where they are located;
  - (e) Whether an ambulance is needed;
  - (f) Whether the suspect is present and, if not, the suspect's description, direction and mode of travel (with appropriate description);
  - (g) Whether children are present;
  - (h) The state of sobriety of the suspect or other influences upon the suspect's state of mind - drug use, mental illness, etc.;
  - (i) Warrants in effect for any party present;
  - (j) The existence and relevant conditions of a protective order; and
  - (k) The existence and relevant conditions of any bail order affecting any party present.
3. When the officers indicate that they are in position to meet with the caller, the dispatcher should instruct the caller to meet with the officers at the entrance. If the caller has hung up, the dispatcher should call back and ask the caller to allow entry by the officers.
4. The dispatcher should continue to update the responding officers as the information changes, until such time as the officers have contact with the victim.

## **INITIAL POLICE OFFICER RESPONSE**

### **APPROACHING THE SCENE**

- (a) The responding officer(s) should approach the scene of a domestic dispute as one of potentially high risk. Whenever possible, a minimum of two officers should respond to a domestic call.

- (b) The officers should obtain all available information from the dispatcher before arriving at the scene and should notify the dispatcher upon arrival.
- (c) The officers should avoid the use of sirens and emergency lights in the vicinity of the scene of the incident unless it is apparent from the information available that the victim is in imminent danger of serious bodily injury.
- (d) The officers should not park the police vehicle directly in front of the residence or other site of the disturbance, because of the potential danger to the officer. The officer should also be alert for assailants leaving the scene and for the appearance of weapons in doors, windows, or nearby vehicles.

## **INITIAL CONTACT WITH OCCUPANTS**

- (a) Responding officers should pause outside the dwelling to which they are responding long enough to determine what is taking place inside. In particular they should attempt to discern the number of parties inside, the location of those parties, the presence of any weapons and the presence of children.
- (b) Unless exigent circumstances requires forced entry, such as the necessity to stop what officers believe to be an ongoing physical assault or a felony, require forced entry, the officers should seek to have one of the parties admit them to the residence. In the absence of exigent circumstances the officer has no right to enter, but shall make reasonable efforts to ascertain the well-being of the occupants. Officers should remain until they reasonably believe that there is no immediate threat of physical harm, and that they have taken appropriate measures to ensure the safety of those present. Note: the 911 call itself may in some instances support a determination of exigent circumstances or include an invitation to enter without force.
- (c) Once inside, the responding officers should establish control by:
  - (1) Identifying and taking physical control of any actual or potential weapons;
  - (2) Separating disputants;
  - (3) Not allowing third parties to intervene unless they can make a positive contribution toward resolving the dispute;
  - (4) Assessing injuries, administering first aid, and/or notifying emergency medical services; and
  - (5) Removing children from the immediate scene to a more calm and safe area inside or away from the dwelling.

## **ON-SCENE INVESTIGATION**

- (a) The responding officers should make detailed observations of the scene and those present for later inclusion their reports. Such observations should include the victim's excited condition, i.e. crying, etc.
- (b) The responding officers should interview the victim and the assailant as fully as circumstances allow. The officer should be alert to possible incriminating statements by the assailant and spontaneous utterances by the victim. Every effort should be made to secure a written statement from the victim before leaving the scene.
- (c) The officers should ensure the victim's safety and privacy by interviewing the victim in an area apart from the assailant, witnesses, and bystanders when possible. The officer should ask the victim about previous domestic incidents, their frequency and severity. Officers should not ask if this is the first such incident, but rather how many times this has happened in the past.

- (d) The officers should ask the victim if there is a protective order in effect (including protective provisions of a bail order) and, if so, if the victim can produce a copy. The officers should note carefully the restrictions imposed by the order so that the officers may determine whether there is probable cause to believe that the order has been violated. NOTE: Any protective order issued by any other state, territory or possession of the United States shall be enforced in New Hampshire, provided it is similar to a protective order issued under RSA 173-B or RSA 458:16 (domestic violence or divorce), and it is still in effect. Officers may rely upon a copy of the order and the statement of the person protected by the order that the order remains in effect.
- (e) If the accused has been arrested prior to interview, the accused must be given Miranda warnings before being questioned. If the accused is not in custody any admissions made to the officers, including the accused's awareness that a protective order is in effect, will be admissible in court.
- (f) If the accused has fled the scene, the officers should solicit information from the victim and witnesses as to the possible whereabouts of the accused (place of employment, relatives, friends, etc).
- (g) Children should be interviewed in a manner appropriate to the child's age.
- (h) Officers should interview any witnesses as fully and as soon as circumstances allow. If witnesses provide information about prior incidents, the officer should document such incidents to establish a pattern.
- (i) The officer should collect and preserve all physical evidence reasonably necessary to support prosecution, including evidence substantiating the victim's injuries, evidentiary articles that substantiate the attack (weapons, torn clothing, etc.), and evidence recording the crime scene. Officers should ensure that photographs are taken of visible injuries on the victim and of the crime scene.
- (j) Officers should encourage the victim to seek an emergency room examination and request that the victim sign a medical release allowing officers to have access to the results of that examination for use in court. Names of medical personnel who deal with the victim should be collected as they may be critical witnesses in the prosecution's case. The officer should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent. Also, because bruises may not appear for several days after an assault, the officers should arrange to have photographs taken of the victim after such bruises fully develop.
- (k) All physical evidence should be collected, noted in reports, and processed as in other criminal investigations. The presence of such evidence may lead to successful prosecution of the accused even if the victim becomes uncooperative or otherwise unavailable by the time of trial. The tape recording of the emergency call to police may prove to be critical evidence. Officers should therefore ensure that such tapes are preserved and available at the time of trial.

## THE ARREST DECISION

1. RSA 173-B:8 mandates that when a defendant violates either a temporary or permanent protective order issued **or enforced** under 173-B officers **SHALL ARREST** the defendant. (NOTE: This includes protective orders issued under RSA 458:16 as part of Divorce Decrees).
2. RSA 633:3-a mandates that an officer **SHALL ARREST** a person when the officer has probable cause to believe a violation of the "Stalking" statute has occurred in violation of a protective order issued pursuant to RSA 173-B or 458:16.
3. In all cases of domestic violence in which an arrest is not mandated by statute [RSA 173-B:8 I.(a), RSA 633:3-a or RSA 458:16 III] officers nevertheless **SHOULD ARREST** with or without a warrant where probable cause exists to support an arrest unless there are compelling reasons not to arrest.

4. An arrest by a peace officer without a warrant on a charge of a misdemeanor or a violation is lawful whenever:

**The officer has probable cause to believe that the person to be arrested has within the past 6 hours committed abuse as defined in RSA 173-B:1, I, against a person eligible for protection from domestic violence as defined in RSA 173-B:1; has within the past 6 hours violated a temporary or permanent protective order issued under RSA 173-B or RSA 458:16 by committing assault, criminal trespass, criminal mischief, stalking, violation of a protective order issued pursuant to RSA 173-B:8, III, or another criminal act; or has within the last 6 hours violated stalking provisions under RSA 633:3-a.**

5. Abuse as defined in RSA 173-B:1 means the occurrence of one or more of the following between family or household members or current or former sexual or intimate partners:
  - (a) Attempting or committing Assault as defined in RSA 631:1, 631:2, or 631:2-a.
  - (b) Placing or attempting to place another in fear by Criminal Threatening as defined in RSA 631:4.
  - (c) Attempting or committing Aggravated Felonious Sexual Assault as defined in RSA 632-A:2.
  - (d) Attempting or committing Kidnapping, Criminal Restraint or False Imprisonment as defined in RSA 633:1 to 633:3.
  - (e) Attempting or committing Arson or Criminal Mischief as defined in RSA 634:1 or 631:2.
  - (f) Attempting or committing Burglary or Criminal Trespass as defined in RSA 635:1 or 635:2.
6. The following factors do not constitute “compelling reasons” not to arrest and should not be considered in the arrest decision:
  - (a) Stress, including stress attributable to family situation, job circumstances or social situation;
  - (b) Alcohol or drug use;
  - (c) Speculation that the victim will not follow through or cooperate with criminal prosecution (whether based on prior incidents involving the same victim, the victim’s hesitancy about pursuing prosecution or any other factor);
  - (d) Adultery or perceived infidelities;
  - (e) The marital status of the parties;
  - (f) Verbal assurances that the violence will stop;
  - (g) A claim by the accused that the victim provoked or perpetuated the violence;
  - (h) Denial by either party that the abuse occurred when there is evidence of abuse;
  - (i) The disposition of any previous police calls involving the same victim or accused;
  - (j) The existence or not of a current protective order (except insofar as the violation of such an order might mandate arrest);
  - (k) Adverse financial consequences that might result from the arrest;
  - (l) That the incident occurred in a private place;
  - (m) The racial, cultural, social, political, or professional position, or the sexual orientation, of either the victim or the accused.
7. It is the officer’s responsibility to decide whether an arrest should be made. The officer, therefore, should not rely on the victim’s opposition to arrest and should emphasize to the victim, and to the accused as well, that the criminal action thus initiated is the State’s action, not the victim’s action.

8. When the officer has probable cause to believe that the persons are committing or have committed abuse against each other, the officer need not arrest both persons, but should arrest the person whom the officer believes to be the primary physical aggressor. In determining who is the primary physical aggressor, an officer shall consider the intent of the statute to protect victims of domestic violence, the relative degree of injury or fear inflicted on the persons involved and any history of domestic abuse between these persons, if that history can reasonably be ascertained by the officer.
9. If the officer decides not to arrest in a domestic violence incident, where such an arrest is lawful, **the officer must include in the report of the incident a detailed explanation of the reasons why an arrest was not made.**
10. The officer should take the accused into custody as soon as the officer determines that a warrantless arrest is appropriate and a sufficient number of officers are present to effect the arrest. If the suspect has fled the scene, the officer should initiate procedures to pursue and apprehend the accused as promptly as possible, since the risk is high in domestic violence cases that the accused will return to the victim's residence or the scene of the violence. If a warrant is necessary, the officer **shall** obtain and execute the warrant as soon as feasible.
11. Subsequent to an arrest for the violation of a protective order, officers **SHALL SEIZE** any deadly weapons in the control, ownership or possession of the defendant which may have been used or threatened to be used, during the violation of the protective order. The law enforcement agency shall maintain possession of the weapons until the court issues an order directing that the weapons be relinquished and specifying the person to whom the weapons shall be relinquished. Under some circumstances a search warrant may be necessary to effect the seizure.
12. Protective orders are designed to protect the plaintiff from the defendant. It is therefore not possible for the plaintiff to be in violation of the order, and under no circumstances should an officer threaten a plaintiff with arrest for violating a protective order. If the plaintiff indicates a desire to initiate contact with the defendant, however, the officer should suggest that the plaintiff contact the issuing court in order to have the order amended.

## **PROCEDURE WHEN ARREST IS NOT POSSIBLE OR IS NOT MADE**

1. If no crime has been committed or there is no probable cause for an arrest, and there are no safety concerns, officers should attempt to mediate the dispute, refer the parties to an appropriate community counseling service, and/or suggest a temporary separation or "cooling-off" period.
2. If one of the parties is to leave, it is advisable for the alleged victim and any minor children present to leave. (The offender may volunteer to leave, only to return immediately upon the departure of the officers). Emergency shelter is available for persons who are afraid for their physical safety from a spouse or partner. Such shelter can be located by calling the **HELP Line (225-9000 or 1-800-852-3388)**.
3. In incidents such as described in paragraphs 1 and 2 the issuance of a protective order may be appropriate. Officers may assist the alleged victim by directing that person to the court during business hours or by requesting a judge to issue an Emergency Order of Protection by telephone during hours when the court is closed.
4. Victims of abuse and their minor children needing transportation to the local emergency shelter will be transported by the officer in accordance with Department regulations. RSA 173-B:11 relieves the officer and his or her supervisors of civil liability for such transportation except in the case of gross negligence or willful misconduct.

## NOTIFICATIONS

1. RSA 173-B:10 requires that all officers **SHALL** give victims of abuse immediate and adequate notice of their right to go to the district or superior court of their county to file a petition asking for protective orders against the abusive person and to sign a criminal complaint at the police station. Officers should provide such notice both verbally and by leaving with the victim a "Domestic Violence Rights" card similar to the attached.

The officer **SHOULD** give the victim the name and phone number of the local domestic violence program and inform the victim of the support and services (including shelter placement) available. Victims should be advised that these services are confidential and free of charge.

2. RSA 173-B:7 requires that protective orders **SHALL** be **PROMPTLY SERVED** on the defendant by a peace officer. Such orders may authorize the peace officer to enter the defendant's residence for the limited purpose of serving the order. Officers should make every effort to ensure that the defendant fully understands the restrictions imposed by the protective order and the penalties for violation of those provisions.

## REPORTING

1. At the conclusion of any domestic call where there is probable cause to believe that a crime has been committed, the officer shall file a narrative report detailing his or her observations, the parties involved and any actions taken.
  - (a) As in any criminal case, if an arrest was made all evidence and relevant information should be documented, including statements from all involved parties and witnesses, to assist the prosecutor. The box on the complaint form indicating that this criminal offense occurred in a domestic setting should also be checked.
  - (b) If no arrest was made the officer will document the compelling reasons which prevented the officer from making the arrest.

## CHILDREN

1. Where children are present at a domestic dispute, their welfare and safety must be a major consideration.
  - (a) Any evidence of neglect or emotional, physical or sexual abuse of children under age eighteen shall be carefully noted and included in the officer's written report.
  - (b) In accordance with RSA 169-C:29, any police officer having reason to suspect that a child has been abused or neglected must report the abuse or neglect immediately, by telephone or otherwise, to the Central Intake Office of DCYF at **1-800-894-5533**.
  - (c) In accordance with RSA 169-C:6, a police officer may take a child into protective custody without the consent of the parents or other person legally responsible for the child's care if the child is in such circumstances or surroundings as would present an imminent danger to the child's health or life unless immediate action is taken and there is not enough time to petition for a court order.

# PROTECTIVE ORDERS

1. RSA 173-B:7 requires that protective orders shall be **promptly** served on the defendant by a peace officer. Once served, such orders should be promptly returned to the court of issuance to expedite entry into the State Police On-Line Telecommunications System (SPOTS).
2. In most cases the responsibility for service of protective orders will fall upon the local police department in the community where the alleged batterer resides.
  - (a) Service of these orders can include the potential for violence, and information about the alleged batterer is thus critical for the safe service of the order.
  - (b) Temporary Restraining Order (TRO) SERVICE INFORMATION forms are available to all district and superior courts and police agencies to facilitate the gathering of pertinent information about the alleged batterer. This information will allow the officer to better assess the potential for violence at the time of service.
3. Officers serving protective orders must ensure that the plaintiff's address or location or the location of any domestic violence shelter is not purposely or inadvertently divulged to the defendant.
4. Law Enforcement agencies shall establish procedures whereby a peace officer at the scene of an alleged violation of a protective order may be informed of the existence and terms of such order.
5. Emergency, Temporary, Final, and Foreign orders are enforceable statewide as are the protective provisions of Divorce Decrees. (**NOTE:** Prior to 1993 the protective order provisions of Divorce Decrees were not enforceable by law enforcement officers. That situation was corrected by the legislature and officers must be aware of the legislative intent to protect ALL victims of domestic violence regardless of the origin of their protective order).
6. The violation of a protective order is a misdemeanor for which arrest is statutorily **mandated** by RSA 173-B:8. (**NOTE:** Effective January 1, 1995 any knowing violation of any protective order is a misdemeanor and arrest is **mandatory**).
7. No order issued pursuant to RSA 173-B shall be modified other than by the court. Temporary reconciliations shall not revoke an order.
8. Information on protective orders which has been forwarded to the Department of Safety by District or Superior Courts is accessible through the State Police On-line Telecommunications System (SPOTS).
9. District and superior court judges are now authorized to issue temporary orders of protection in domestic violence cases when the court is not open for business. RSA 173-B:6. **This process should not be used as a substitute for arresting an offender** in a domestic violence situation and establishing a "no contact with the victim" provision as a condition of bail. This provision may be used where there is not sufficient information to establish a violation of criminal law or there is probable cause to arrest but the perpetrator has not been taken into custody.
  - (a) Have the plaintiff complete and sign the allegation of abuse section of the form (Emergency Order of Protection and Affidavit of Service) being as specific as possible regarding dates, times and events.
  - (b) Call the judge of the district court having jurisdiction. If contact is not made, call an associate or special justice. If no contact can be made with the justice, associate justice or special justice, refer to the list of judges for your jurisdiction and call the judge nearest to your location.
  - (c) Identify yourself to the judge and read the plaintiff's allegation of abuse. The plaintiff should, if possible, be in the same room, in order to expedite responses to any inquiries the court may have. Do NOT put the plaintiff on the phone with the judge unless requested to do so by the court.

- (d) The officer certifies by his or her signature that the facts as stated by the plaintiff have been reported to the judge.
  - (e) When the judge indicates that a finding of domestic violence is being made, check the appropriate box on the Order Form and proceed to read to the judge each available order, checking any numbers the judge indicates.
  - (f) At the conclusion of the telephone conversation with the judge, sign the order where indicated and provide the plaintiff with a copy.
  - (g) Carefully explain to the plaintiff that the order remains in effect only until the close of the next court business day. A new petition must be completed by the close of the next court business day in order for protection to continue.
  - (h) Follow all departmental procedures for service of the defendant's copy upon the defendant.
  - (i) File return of service at opening of the next business day at the court of jurisdiction of the residence of the plaintiff.
10. If an officer is confronted with conflicting protective orders, the officer should contact a judge who signed one of the orders, for clarification.
11. The 1994 federal Crime Control Act made it a violation of the Gun Control Act of 1968 for any person to possess a firearm or ammunition if that person is the subject of a protective order and the person had an opportunity to be heard (i.e. a final order). An officer finding such a person possessing a firearm or ammunition should seize the items and report the incident to United States Division of Alcohol, Tobacco and Firearms. (Federal, State and local law enforcement officers, on or off duty, may be exempt from these provisions of the Gun Control Act if their official duties require the possession of firearms or ammunition).

## **COURT SECURITY**

1. Police officers, when they come into contact with victims of domestic violence should, at an appropriate point in the contact advise the victim that they should notify police, the victim/witness advocate, the prosecutor, or the clerk of court when they have been threatened or suspect that they may be harmed immediately prior to, during, or after a court proceeding.
2. As domestic violence situations are volatile, the criminal justice community must take the threats seriously. Police officers should report such incidents to their supervisors, and/or the Administrative Office of the Courts at the earliest convenience. Officers should follow Departmental Procedures on emergency notifications.
3. Officers should be aware that District Court Bailiffs have no arrest authority and that their responsibility lies within the court building itself. In Superior Court, the Bailiffs are sworn as Deputy Sheriffs and have all of the powers of that position. Their responsibility, however, also is principally within the court itself.
4. Officers who are made aware of a threat may deem that it is in the victim's best interest to provide an escort to victims traveling to and from the court hearings. Obviously, the actions taken should be based upon the officer's assessment of the threat potential. Officers should keep in mind that the stalking statute which may apply in such cases.
5. Finally, the officer should coordinate his or her efforts with the Court. The Administrative Office of the Courts (271-2521) will provide a local contact at the court where the hearing is going to take place. If the officer ultimately decides to provide an escort to the victim, the local court bailiff should be prepared to escort the victim in the courthouse when the officer arrives.



# **DOMESTIC VIOLENCE SUMMARY**

## **(MAYS AND MUSTS A GUIDE FOR POLICE OFFICERS)**

1. Upon the initial report of **“abuse”, with probable cause** to arrest present, the decision of whether or not to arrest is up to the officer/local department policy. Legislative intent clearly favors arrest.
2. Arrests **MAY** be made for the following offenses committed **within the last 6 hours** even though not committed in the officer’s presence:
  - a) **abuse** - (assault, criminal threatening, agg. fel. sexual assault, kidnapping, criminal restraint, false imprisonment, arson, criminal mischief, burglary, trespass).
  - b) **violation of a temporary or permanent protective order.** (mandatory arrest).
  - c) **stalking.**
3. Arrests **MUST** be made for:
  - a) **Violation of a protective order** (Emergency, Temporary, Final, Foreign or Divorce).
  - b) **Stalking in violation of a protective order.**
4. Other **Mandates:**
  - a) Protective orders **MUST** be served promptly.
  - b) Agencies **MUST** establish procedures to inform officers of the existence of protective orders.
  - c) Subsequent to arrest involving the violation of a protective order, officers **MUST** seize weapons used or threatened to be used.
  - d) Officers **MUST** use all means within reason to prevent further abuse.
  - e) Officers **MUST** give notice of right
    - to file a petition requesting a protective order.
    - to sign a criminal complaint.



